

1 It says in Section 15.022, the definition of
2 grievance, that it includes a view or opinion
3 pertaining to employment conditions. You see where
4 it says that on the first line there? Let me quote
5 it completely: "A grievance is a complaint, a view
6 or opinion pertaining to employment conditions, to
7 relationships between employees and supervisors, and
8 to relationships with other employees."

9 You see where it says that? I think it's on
10 the first page.

11 MR. MCKOON: Let me find it for you,
12 Bubba. Looks like it's missing out of this
13 book.

14 A. I don't have it.

15 Q. Sorry.

16 MR. MCKOON: Look at mine. Definition of a
17 grievance.

18 A. Okay. Would you start again, please?

19 Q. You have it in front of you now
20 apparently. It says, in Section 15.022, "a
21 grievance is a complaint, a view, or opinion
22 pertaining to employment conditions, to
23 relationships between employees and supervisors, and
24 to relationships with other employees."

25 You see where it says that?

1 A. I do.

2 Q. Do you concur with that, that that's the
3 definition of grievance or complaint?

4 A. Yes, sir, as stated in the merit system.

5 Q. Okay. Does this really apply to individual
6 employee grievances or complaints? Like, for
7 example, a firefighter doesn't like his salary or
8 benefits or hours of work. Does it focus on the
9 individual having a complaint?

10 A. I look at this as a two-way street. It can
11 be either individual or group or any group can have
12 the same grievance with a spokesman coming or an
13 individual, either/or.

14 Q. Now, at the end of Exhibit 3 is the fire
15 department ASOP-12. ASOP-12 is the fire
16 department's standard operating procedure concerning
17 addressing city council. You are familiar with this
18 document, correct?

19 A. Yes, sir.

20 Q. Okay. Says in paragraph three, "if a
21 problem cannot be solved by anyone in the chain of
22 command, then the city manager will arrange a
23 hearing with the city council."

24 Do you see where it says that?

25 A. I do.

1 Q. Have you, in fact, ever arranged a hearing
2 with the city council concerning a city employee
3 wanting to address the council?

4 A. Not -- no, sir, I have not.

5 Q. Okay. So in your six-plus years, you have
6 not done that?

7 A. No.

8 Q. What is your understanding of what is meant
9 by you, as city manager, will arrange a hearing with
10 the city council. Would that be you, yourself,
11 doing the hearing or airing the concern?

12 A. No, sir. It would be with the individual
13 or the group.

14 Q. But you say you've never done that?

15 A. Not to my knowledge. Not that I remember.

16 Q. Mr. Roberts, as a city manager, do you
17 believe or feel that a city employee like a
18 firefighter, speaking as a citizen and while off
19 duty and out of uniform, has the right to address
20 the city council?

21 A. On matters other than pertaining to the
22 fire department or to the police department or
23 issues within the work force, yes, sir, I do.

24 Q. So a firefighter could go directly to the
25 city council while off duty and as a citizen and

1 speak to the city council in an open public meeting
2 about issues that affect the fire department?

3 A. Not about issues that affect the fire
4 department, sir.

5 Q. Okay. Then I'm sorry. I didn't understand
6 your earlier response. So that's out of bounds? A
7 firefighter cannot go to the city council, as a
8 citizen off duty, and speak about issues that affect
9 the fire department?

10 A. That is my understanding, sir, of the merit
11 system and the SOPs.

12 Q. And when you say the merit system, those
13 are the regulations and the ASOP-12 that would
14 preclude that from happening?

15 A. Yes, sir.

16 Q. Let me ask you, you're familiar with how
17 citizens, I guess, get on the agenda for the city
18 council to speak with the council, correct?

19 A. I am.

20 Q. And how does that process work?

21 A. There's an application that's filled out in
22 the city clerk's office. It has to be by a
23 deadline, which was Thursday prior to the meeting on
24 the following Monday. And they're put on the agenda
25 with the content of what they're to talk to the

1 council about, sir.

2 Q. Okay. So if I understand what you just
3 said, an individual citizen would fill out a form
4 requesting permission to address the council and
5 submit it ahead of time?

6 A. Yes, sir.

7 Q. Let me invite your attention to
8 Exhibit 37. This appears to be one of those request
9 forms. This one, as an example, happens to be from
10 an individual named Martha Harris, and it's dated
11 November 9, 2006. And apparently she has made a
12 request to address the council. And this memo was
13 sent to Walter Grabon -- Grabon?

14 MR. MCKOON: I'm just trying to shorten --
15 I think you've got that wrong. It's Mr. Grabon
16 that's making the request. That's just a fax
17 cover sheet I think you're looking at there.
18 Martha Harris is the city clerk.

19 MR. WOODLEY: Okay.

20 MR. MCKOON: If you look at the second
21 page, I think it will clarify. I'm not trying
22 to interrupt.

23 MR. WOODLEY: I appreciate that
24 clarification.

25 Q. So apparently the individual Walter Grabon

1 wanted to address the city council, and that is
2 clearer, I think, on the second page of this
3 exhibit. Is that your understanding of how the
4 process works?

5 A. Yes, sir.

6 Q. And sometimes are these requests to address
7 the city council screened out and not allowed, if
8 you know?

9 A. We screen.

10 Q. Do you do it yourself?

11 A. I do.

12 Q. All requests to address --

13 A. Not all requests, no.

14 Q. Does the city clerk screen all of them?

15 A. She does.

16 Q. Okay. And have you, on occasion, not
17 permitted a request to address the council?

18 A. We have on occasion, when the request would
19 be made late, after the deadline. Not on one that
20 has been made prior to the deadline.

21 Q. Do you know of any situation where any city
22 employee has submitted a request in one of these
23 forms to address the city council?

24 A. Not to my knowledge, no, sir.

25 Q. Okay. And what is the kind of session

1 conducted by the city council where they listen to
2 comments made by citizens?

3 A. This is a work session.

4 Q. And is that usually held the day before the
5 public meeting?

6 A. It is.

7 Q. Is it held at night?

8 A. Yes, sir, it is.

9 Q. Okay. Let me invite your attention to
10 Exhibit 38. This is a collection of examples, I
11 believe, of agendas for the work session of the city
12 council. Would you agree with that?

13 A. I would.

14 Q. And this would be the occasion, the work
15 session where citizens would address the council; is
16 that correct?

17 A. That is correct.

18 Q. Do citizens ever address the council at
19 their formal meetings on Tuesday nights?

20 A. Very seldom.

21 Q. Why do you say that?

22 A. It's handled in the work agenda.

23 Q. In the work session?

24 A. That's the wishes of the council.

25 Q. So the formal meetings of the city council

1 are more business of the council as opposed to
2 entertaining comments?

3 A. Yes, sir.

4 Q. But what about the public hearing that's
5 conducted on the budget? Is that more of an open
6 meeting where individuals can come forward and
7 comment on a proposed budget?

8 A. Yes, sir, it is.

9 MR. MCKOON: To be clear, the work session
10 is an open meeting. Just want to let you know
11 that.

12 MR. WOODLEY: Thank you.

13 Q. Do the police officers here in the city
14 have any kind of labor organization or union?

15 A. Fraternal Order of Police.

16 Q. But as far as you know, none of the
17 representatives of the police labor organization
18 have addressed the city council about police issues?

19 A. Not since I have been here, no, sir.

20 Q. How about before you were here? Are you
21 aware of that?

22 A. No, sir.

23 Q. Now, let's focus on the proposed city
24 ordinance which was eventually adopted by the city
25 council, which is -- I'm afraid I only have one

1 copy, but I'll be glad to share it with both you and
2 Mr. McKoon.

3 MR. MCKOON: Hold on a minute. I've got it
4 somewhere. I'll give him one. You talking
5 about that one?

6 Q. Well, I can actually talk about that.
7 Let's talk about that, which I've got in here as
8 exhibit --

9 MR. MCKOON: I'm sorry. I thought that's
10 the one you were going to --

11 MR. WOODLEY: That's all right.

12 Q. Exhibit 34, Mr. Roberts, is a document
13 produced by the city in this case which appears to
14 be an ordinance number 78-24 adopted back in 1978.
15 And as I understand it, this is where the city
16 council adopted all of the merit system rules and
17 regulations. Is that your understanding as well?

18 A. This is the very first adoption of a merit
19 system for the City of Phenix City.

20 Q. And then since then, periodically, the
21 council has adopted amendments or additions to the
22 merit system rules and regulations?

23 A. A very few times.

24 Q. But one of those very few times was the one
25 that is significant in this case, which is ordinance

1 number 2006-13 that apparently was adopted by the
2 city council on April 18, 2006. Let me show you
3 that. Take your time to read that. You are
4 familiar with that, Mr. Roberts?

5 A. Right, I am.

6 Q. And, in essence, that was the ordinance
7 that extended the probationary period from a year to
8 18 months for the fire department, police
9 department, and code enforcement officers, correct?

10 A. That is correct.

11 Q. And this is the subject, among others, that
12 apparently Mr. Davis spoke to Mayor Hardin about on
13 the telephone, correct? As far as you know?

14 A. I don't know what he talked to the mayor
15 about, sir.

16 Q. You don't know that Mr. Davis was talking
17 to the mayor about the opposition of his firefighter
18 union members to this proposed ordinance?

19 A. I knew that.

20 Q. Okay. Now, is it your position as the
21 Rule 30(b)(6) witness and the city manager that
22 Mr. Davis should have exhausted the chain of command
23 or grievance procedures within the city before he
24 voiced his opposition to this proposed ordinance?

25 A. Yes, sir.

1 Q. Okay. I want to walk through that, because
2 I want to be able to get my arms around this issue.
3 Are you saying in response to that earlier question
4 that Mr. Davis could have gone to his captain, first
5 line officer in the fire department, and voiced his
6 opposition to this proposed ordinance, and the
7 captain could have given him relief in some way? He
8 could have stopped the adoption of this ordinance by
9 the council?

10 A. I'm not going to say the captain could have
11 stopped the adoption of the ordinance. The captain
12 could have given him permission to go up his chain
13 of command to where he could get to the proper
14 people to whom he could talk to in regard to the
15 possible adoption of any ordinance.

16 Q. So then when the captain just moves it up
17 the chain of command, Mr. Davis's opposition to this
18 proposed ordinance, he would have gone to his
19 battalion chief, I take it?

20 A. Yes. Yes, sir.

21 Q. Could the battalion chief have given him
22 any relief in preventing the council's adoption of
23 this ordinance?

24 A. No, sir. He would have to follow the chain
25 completely, like I said in the earlier question.

1 Q. So it would go up to the assistant chief
2 and then up to Chief Hunter?

3 A. Up to Chief Hunter. And then by the merit
4 system, it would come to me, and then he could voice
5 his command to the legislative portion of this
6 government, which is city council.

7 Q. And you're the chief executive officer?

8 A. Yes, sir.

9 Q. All right. Then if Mr. Davis had gone to
10 Chief Hunter voicing, on behalf of his union
11 members, the opposition to this proposed ordinance,
12 are you aware of anything Chief Hunter, within his
13 authority, could have done?

14 A. He could have directed them to us -- to me.

15 Q. So, to you, that's all Chief Hunter could
16 have done --

17 A. Yes, sir.

18 Q. -- is just route it on to you? And then if
19 he did that, and this concern about the adoption was
20 routed on to you, is there anything you could have
21 done, within your power as city manager, to have
22 prevented or stopped the city council from adopting
23 this ordinance?

24 A. I could have got him a meeting with the
25 city council and let them -- let him express their

1 opinion as it related to the issues around that
2 particular ordinance.

3 Q. Okay. So through the chain of command and
4 through your position, it would just have to be
5 routed on to the council?

6 A. That's correct.

7 Q. Are you aware of any disruptive impact that
8 Mr. Davis's conversation with Mayor Hardin opposing
9 this proposed ordinance had, in fact, within the
10 city's fire department?

11 A. Would you please explain that question?

12 Q. Yes. Are you aware of any adverse
13 consequences or serious disruptive impact that was
14 produced by Mr. Davis talking to Mayor Hardin about
15 the opposition to the ordinance?

16 A. I am not privy to all fire department
17 operations on a day-to-day basis per se. I do not
18 know the repercussions.

19 Q. Okay. Has Chief Hunter ever told you that
20 as a result of Mr. Davis contacting the mayor about
21 this proposed ordinance, it had a significant
22 disruptive impact on fire department operations or
23 efficiency?

24 A. Chief Hunter advised that if the call
25 violated their SOP or merit system.

1 Q. But other than violating the SOP or merit
2 system, did he ever discuss with you any actual
3 adverse impact that it had within the fire
4 department's operations or efficiency?

5 A. I do not recall and neither do I remember
6 asking him were there any.

7 Q. Okay. Let me switch gears for a moment and
8 talk about the First Amendment right to free speech
9 and free association under our United States
10 Constitution. I take it based upon your extensive
11 experience, particularly as the city manager for
12 over six years, that you're aware of the right that
13 all citizens, including public employees, have under
14 our First Amendment to free speech and free
15 association. Is that a valid statement?

16 A. I'm aware of the First Amendment.

17 Q. Are you aware that public employees also
18 have a First Amendment right of free speech and free
19 association?

20 A. I understand they're covered by the First
21 Amendment.

22 Q. What is your understanding of that?

23 A. They have restrictions that they have to
24 follow.

25 Q. What are those?

1 A. The chain of command for one. They are a
2 paramilitary organization.

3 Q. Any other restrictions?

4 A. Not to my knowledge.

5 Q. I think you told me you were a former
6 marine, right?

7 A. No, sir. Army.

8 Q. What an insult that was, huh? I'm former
9 U.S. Army as well. How long were you in the Army?

10 A. Forty-one years.

11 Q. Forty-one? And what was your last rank
12 when you left?

13 A. Chief Warrant Officer IV.

14 Q. Let me invite your attention to Exhibit 17,
15 Mr. Roberts, which is the letter from the
16 International Association of Firefighters' General
17 President Harold Schaitberger dated January 31,
18 2006, addressed to yourself with copies going to
19 Mayor Hardin and Chief Wallace Hunter. Do you
20 recall having received this letter from
21 Mr. Schaitberger a few days after its date?

22 A. I do.

23 Q. What did you do, if anything, when you
24 received this letter? Did you take any action or
25 speak to anyone?

1 A. I called both Chief Hunter and Chief Waters
2 and asked them the contents of what was going on.
3 Chief Waters advised that he would talk with
4 Mr. Davis.

5 Q. Anything else?

6 A. And then a letter was drafted and returned
7 back to the -- answering this letter.

8 Q. And you'll note again that Mr. Schaitberger
9 refers to certain legal principles and rights under
10 the First Amendment and cites actual court
11 decisions. You see where it says that generally?

12 A. I do.

13 Q. Did that prompt you to go to the city
14 attorney and discuss this letter and its contents
15 with the city attorney?

16 A. I have discussed the contents with Attorney
17 Graham.

18 Q. But did you do so shortly after receiving
19 the letter; do you remember?

20 A. Within a short time frame, that's correct.

21 Q. Within a week or two?

22 A. Probably quicker than a week.

23 Q. And why did you do that; do you remember?

24 A. Anything that's of concern that deals with
25 law, then naturally I'm going to ask advice of my

1 city attorneys.

2 Q. I want to go through as I did with Chief
3 Hunter when you were here in his deposition, some of
4 the statements in this letter to see if you are
5 aware of the principles. And the first one I want
6 you to look at is on page 2 of Mr. Schaitberger's
7 letter in the middle starting paragraph where it
8 says, "it is well established that the First
9 Amendment right of free association includes the
10 right to belong to and to actively participate in
11 labor organizations."

12 Do you see where it says that?

13 A. I do.

14 Q. Were you aware of that statement of law or
15 principle even before you received
16 Mr. Schaitberger's letter?

17 A. Yes, sir.

18 Q. And were you aware of that principle for a
19 number of years like when you first became city
20 manager?

21 A. A number of years prior to being city
22 manager.

23 Q. Fair enough. Next, it says, the very next
24 sentence, "the right to discuss and inform people
25 concerning the advantages and disadvantages of

1 unions and joining them is protected not only as
2 part of free speech but as part of free assembly."

3 Do you see where it says that?

4 A. I do.

5 Q. And were you aware of that principle of law
6 and protection even before you became city manager?

7 A. I was.

8 Q. And were you aware of it during the time
9 that you have been city manager?

10 A. I am.

11 Q. And are you aware that there's actually a
12 State of Alabama Code provision that gives the right
13 to firefighters to belong to a union and to make
14 proposals to their employers?

15 A. I am.

16 Q. And have you been aware of that during the
17 entire time that you were city manager?

18 A. Yes, sir.

19 Q. The next statement on page 2 of
20 Mr. Schaitberger's letter says in the beginning of
21 the last paragraph, "moreover, although there is no
22 right or entitlement to government employment, the
23 denial or deprivation of a job and related benefits
24 may not be based on one's exercise of First and
25 Fourteenth Amendment Rights."

1 Do you see where it says that?

2 A. I do.

3 Q. Were you aware of that legal protection and
4 right and principle of law during the time that you
5 have been city manager?

6 A. Yes, sir.

7 Q. The next sentence says, "in this regard,
8 individuals have the First Amendment right to speak
9 out about matters of public concern without having
10 government employers retaliate against them for the
11 exercise of their right to free speech."

12 Do you see where it says that, Mr. Roberts?

13 A. I do.

14 Q. Were you aware of that statement of law or
15 principle during the entire time you have been city
16 manager?

17 A. I am.

18 Q. Next sentence says, "retaliation by a
19 government employer against an individual who
20 exercises his First Amendment rights constitutes a
21 First Amendment violation."

22 Do you see where it says that?

23 A. I do.

24 Q. Were you aware of that principle or
25 protection under the law during the entire time

1 you've been city manager?

2 A. I am.

3 Q. The next sentence says, "indeed, few
4 subjects are of more public concern than the
5 provision of basic fire and rescue services."

6 You see where it says that?

7 A. I do.

8 Q. Would you agree with that statement?

9 A. It's one of the top public concerns, if not
10 the top. It ranks right up there.

11 Q. So the citizens here in Phenix City would
12 have a legitimate interest and a public concern
13 about how they are furnished fire and rescue
14 services?

15 A. Yes, sir. That's correct.

16 Q. Okay. Thank you. Have you ever received
17 any subscriptions or read any articles or reports
18 about First Amendment protections of free speech and
19 free association that are accorded public employees
20 like firefighters?

21 A. I do not receive any articles on that, no.

22 Q. Have you read articles or reports about
23 First Amendment protections for public employees?

24 A. I have read articles as it relates to
25 public service employees and the relationship to the

1 First Amendment rights.

2 Q. And is that during the time you have been
3 city manager?

4 A. I couldn't answer that. I don't remember.

5 Q. Okay. Have you ever gone to any
6 educational programs or seminars where the subject
7 of First Amendment rights of public employees has
8 been reviewed?

9 A. I have not attended any as city manager,
10 no.

11 Q. Now, a few weeks ago, Mr. McKoon forwarded
12 to me a box of documents in response to our request
13 for production of documents, and it was over 2000
14 pages. Very expensive, by the way. Did you have
15 occasion to look through all of those documents
16 before they were sent my way?

17 A. No, sir.

18 Q. Do you know if anyone within the city did
19 that?

20 A. Every copy was made by either one of the
21 secretaries in the back or Mr. McKoon's secretary,
22 so someone saw every article.

23 Q. Were those copies made here in City Hall?

24 A. Yes, it was.

25 Q. Let me ask you this. With regard to the

1 decision and implementation of the decision to
2 discharge Mr. Davis in April 2006, did you give your
3 prior concurrence or approval to Chief Hunter to
4 implement that discharge decision?

5 A. I was notified of the termination. The
6 department heads are given that authority. As the
7 city manager, there again, I sat with the Personnel
8 Review Board as stated in my prior deposition, I
9 think. You know, I didn't sign the termination
10 notice due to the fact that I eventually have to
11 sign a letter if, in fact, the termination is
12 upheld.

13 Q. Well, I'm not sure that was really
14 responsive to my question. I'm really focusing on
15 whether or not you gave the OK, your approval as
16 city manager, to Chief Hunter before the decision to
17 discharge Mr. Davis was implemented?

18 A. You could say that, yes.

19 Q. Now, do you recall filing an affidavit
20 earlier in this lawsuit?

21 A. I do.

22 Q. Who typed that affidavit up?

23 A. It was typed up at Mr. McKoon's office.

24 Q. And who prepared the language in that
25 affidavit?

1 A. Mr. McKoon asked me a series of questions
2 and then he put it together in the letter.

3 MR. WOODLEY: All right. I don't have any
4 further questions. Thank you, Mr. Roberts.

5 EXAMINATION

6 BY MR. MCKOON:

7 Q. All right. I just have probably one
8 question. Mr. Roberts, at any time during your
9 participation in the termination of Mr. Davis, did
10 you have any feeling or belief that you were
11 violating any of his First Amendment rights as you
12 have been -- as they were defined and asked about by
13 Mr. Woodley?

14 A. No, sir, I didn't.

15 MR. MCKOON: That's all.

16 MR. WOODLEY: We're done. Thank you.

17 (The deposition concluded at 12:06 p.m.)

18 * * * * *